



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

OCT 20 2004

FIRST CLASS MAIL

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RE: MUR
The Leadership Forum, Inc.

Dear Counsel:

On January 23, 2004, the Federal Election Commission notified your client, The Leadership Forum, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on September 28, 2004, found that there is reason to believe that The Leadership Forum violated 2 U.S.C. §§ 433, 434, 441a(f) and 441b(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Please note that respondents have an obligation to preserve all documents, records and materials relating to the Commission's investigation.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with your responses to the enclosed subpoena and written questions within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

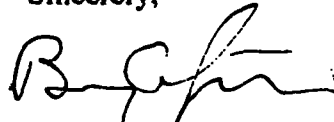
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact April J. Sands, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: The Leadership Forum, Inc. MUR:

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by the Center for Responsive Politics, the Campaign Legal Center, and Democracy 21. See 2 U.S.C. § 437g(a)(1). The complaint received by the Commission alleges that The Leadership Forum is violating federal campaign finance laws by spending millions of dollars, raised outside the limitations and prohibitions of the Federal Election Campaign Act of 1971, amended ("the Act"), to influence the upcoming presidential election.

The Leadership Forum argues in response to the complaint that, as a matter of law, its activities do not result in violations of the Act. Generally, The Leadership Forum asserts that it is not a political committee and, therefore, not subject to the limitations and prohibitions of the Act and that "its Articles of Incorporation expressly *forbid* it from engaging in 'Federal Election Activity' as defined by the BCRA." Resp. of The Leadership Forum at 6 (emphasis in original).

II. FACTUAL AND LEGAL ANALYSIS

A. FACTS

The Leadership Forum is a Section 527 organization. The Leadership Forum does not maintain a federal account.

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The Leadership Forum was founded in 2002 with substantial assistance from the National Republican Congressional Campaign Committee,¹ but until recently has remained dormant. The Leadership Forum's officers and advisory board include former Members of Congress, former aides to Republican Party leaders, and others with extensive connections to the national party leadership. In addition, current congressional leaders, including House Speaker Dennis Hastert, were scheduled to appear at Leadership Forum events this summer.

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The Leadership Forum, in its filing with the IRS, states that its purpose is "to engage in nonfederal political activities on state and local levels and to engage in dialogue on issues of importance to all Americans."² Yet public statements by the Forum's officers indicate its intent may nonetheless be to influence federal elections. For example, the Forum's president, Susan Hirschmann, stated that the organization has begun raising money in earnest to counter the millions of dollars already raised by Democratic groups that have publicly stated their desire to defeat President Bush. "If the FEC fails to enact regulations, 'it will be abundantly clear that 527s are going to play a major role in the election,' Hirschmann said. 'We do not want to see Soros and the unions and the liberal Democrat 527s go unanswered.'" ³ Likewise, the Forum's vice president, Bill Paxon, said that the organization is playing "catch up" to these Democratic groups. *See id.*

¹ Most of the NRCC's involvement, however, occurred prior to November 6, 2002 and therefore cannot be considered when determining if the NRCC established, financed, maintained, or controlled the Leadership Forum. *See* 11 C.F.R. § 300.2(c)(3); *see also* MUR 5338 (Commission found no RTB because post-November 2002 NRCC involvement was insufficient to demonstrate that the Forum was established, financed, maintained, or controlled by the NRCC).

² IRS Form 8871, filed February 27, 2004.

³ http://www.usatoday.com/news/politics/elections/nation/president/2004-05-12-gop-soft-money_x.htm

According to its IRS disclosure reports, the Leadership Forum has raised hundreds of thousands of dollars from corporations, and has spent more than \$1,000. In the first six months of 2004, Leadership Forum reported \$116,225 in receipts and \$21,424 in disbursements.

B. ANALYSIS

1. Summary of the law

The Act defines a "political committee" as any committee, club, association, or other group of persons that receives "contributions" or makes "expenditures" for the purpose of influencing a federal election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The term "contribution" is defined to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i). *See, e.g., FEC v. Survival Educ. Fund, Inc.*, 65 F.3d 285, 295 (2nd Cir. 1995) (where a statement in a solicitation "leaves no doubt that the funds contributed would be used to advocate [a candidate's election or] defeat at the polls, not simply to criticize his policies during the election year," proceeds from that solicitation are contributions).

2. "Political committee" status

The Leadership Forum is a Section 527 organization that files reports with the IRS. By law, a 527 organization is "a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." 26 U.S.C. § 527(e)(1). The "exempt function" of 527 organizations is the "function of influencing or attempting to influence the selection, nomination, election or appointment of any individual to any Federal, State, or local public office or office in a political organization," or the election or

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selection of presidential or vice presidential electors. 26 U.S.C. § 527(e)(2). As a factual matter, therefore, an organization that avails itself of 527 status has effectively declared that its primary purpose is influencing elections of one kind or another.

The Leadership Forum's public statements and activities point specifically to a focus on influencing the 2004 presidential election. Where, as here, the available information amply demonstrates that the objective of The Leadership Forum is to influence the 2004 presidential election and The Leadership Forum has apparently raised and spent thousands of dollars in furtherance of that objective, it is appropriate for the Commission to investigate whether, among those thousands spent and received, The Leadership Forum has made \$1,000 in "expenditures," or received \$1,000 in "contributions" as defined by the Act. If it has, The Leadership Forum is a political committee subject to the contribution limitations, source prohibitions, and reporting requirements of the Act.⁴ See 2 U.S.C. §§ 431(4)(A), 433, 434, 441a, and 441b.

III. CONCLUSION

The factual record provides a basis on which to infer at this stage that The Leadership Forum has made \$1,000 in "expenditures" or received \$1,000 in "contributions" as defined by the Act, see 2 U.S.C. §§ 431(8) and 431(9), and that the Commission should investigate whether The Leadership Forum is required to register and report as a political committee. Therefore, there is reason to believe that The Leadership Forum, Inc. may have violated 2 U.S.C. §§ 433, 434, 441a(f), and 441b(a) by failing to register as a political committee with the Commission; by failing to report its contributions and expenditures; by knowingly accepting contributions in excess of \$5,000; and by knowingly accepting corporate and/or union contributions.

⁴ To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity can potentially qualify as political committees under the Act. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986).